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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GIRAFA.COM, INC.,

Plaintiff,

v.

ALEXA INTERNET, INC.; NIALL  
O'DRISCOLL

Defendants.

CASE NO. CV 08-2745 RMW

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO DISMISS,  
TRANSFER OR STAY**

Date: September 5, 2008  
Time: 9:00 a.m.  
Dept.: 6, 4th Floor  
Judge: Honorable Ronald M. Whyte

1 Defendants Alexa Internet, Inc. and Niall O'Driscoll's ("Defendants") Motion to Dismiss,  
2 Transfer or Stay Plaintiff's First and Second Claims for Declaratory Relief having been fully  
3 considered along with Plaintiff Girafa.com, Inc.'s ("Plaintiff") briefing and the evidence before  
4 the Court;

5 THE COURT HEREBY FINDS THAT:

6 1) Alexa Internet, Inc. ("Alexa") filed a Complaint for the infringement of U.S.  
7 Patent No. 6,282,548 in the Eastern District of Texas, Marshall Division on March 21,  
8 2008 (the "Texas Action");

9 2) Alexa's Complaint for patent infringement in the Texas Action was filed before  
10 Girafa filed its Complaint in the above-captioned case;

11 3) Girafa's First and Second Claims for Declaratory Relief present identical issues as  
12 the issues in the Texas Action;

13 4) Girafa and Alexa are parties to both the above-captioned case and to the Texas  
14 Action;

15 5) The "First-to-File" rule applies to Girafa's First and Second Claims without any  
16 exception; and

17 6) The Eastern District of Texas presents a convenient forum for Alexa and Girafa to  
18 litigate Alexa's claims for patent infringement and Girafa's request for Declaratory Relief.

19  
20 **IT IS HEREBY ORDERED THAT** Defendants' Motion to Dismiss Plaintiff's First and  
21 Second Claims in the above-captioned case is GRANTED without leave to amend.

22 **IT IS SO ORDERED.**

23 Dated: September \_\_\_\_\_, 2008

24 \_\_\_\_\_  
25 RONALD M. WHYTE  
26 United States District Judge  
27  
28